Supreme Court, U.S.
FILED
JUL 18 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-91

RONALD S. DICK,

Petitioner,

v.

JOSEPH A. CALIFANO, etc., et. al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Ronald S. Dick, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit, rendered in these proceedings on February 20, 1980.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is captioned Ronald S. Dick, Plaintiff-Appellant v. Joseph A. Califano, etc., et. al.; Defendants - Appellees, No. 78-1400; filed on January 2nd, 1980, and

denial of rehearing filed on February 20, 1980. These opinions appear as part of the appendix, at Appendix A and B-2b. The opinion of the United States District Court For The District of Maryland, at Baltimore, H-76-512, was filed March 31, 1978 and is printed as an appendix to this petition at Appendix C-10c.

JURISDICTION

Extension of time to file this petition was granted until July 19, 1980. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1) and Rule 19(b) of this Court.

QUESTIONS PRESENTED

Petitioner was a GS-14, Operations Research Analyst for the Social Security Administration, when he was involuntarily retired and given civil service retirement disability benefits, which involuntary retirement is contested by petitioner. The questions presented are:

1. Whether there was substantial departure from important procedural rights, or some like error going to the heart of an administrative determination by U. S. Civil Service Commission, in concluding that Petitioner, Ronald S. Dick, an employee of the Social Security Administration, was totally disabled for his position, where use of security and medical information, known *prior* to hiring by the Federal agency employer, was made at a later time in an agency-initiated, adverse action/retirement proceeding, contrary to U. S. Civil Service Commission's Federal Personnel Manual, Chapter 752 — Adverse Actions by Agencies, Subchapter 1-3. c. and d.?

2. Whether problems in obtaining a reviewing psychiatrist to examine petitioner, as required by regulations of the U. S. Civil Service Commission, (U. S. Civil Service Commission's Federal Personnel Manual, Chapter 831, Disability Retirement, Subchapter S10) resulting in petitioner being retired involuntarily, were such a violation of his rights as to require reversal?

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED

U. S. Civil Service Commission Federal Personnel Manual, Chapter 752, Adverse Actions by Agencies, Subchapter 1-3. c. and d., and Chapter 831, Disability Retirement, Subchapter S10. (Appendix D, and E-2e)

STATEMENT OF FACTS

This matter arose upon a complaint to the United States District Court for the District of Maryland, to review the involuntary disability retirement of petitioner by the Social Security Administration, from the petitioner's position as a GS-14 Operations Research Analyst, on the grounds petitioner suffered from the same paranoid personality previously claimed years before by the U. S. Department of Defense.

In the opinion of the United States District Court for the District of Maryland, Judge Harvey erroneously states (Appendix C-8c) that "... plaintiff was given the opportunity to undergo a second medical examination by the Civil Service Commission, but did not avail himself of the opportunity."

The opinion, and the basis therefore, were in error, because all psychiatrists assigned to petitioner's case by the Civil Service Commission *refused* to examine petitioner.

Petitioner subsequently appealed the opinion of the United States District Court for the District of Maryland to the United States Court of Appeals for the Fourth Circuit, on the basis of being denied a review medical examination, as required, by a Civil Service Commission psychiatrist; and the use by the agency of a psychiatric opinion based on that contained in another agency medical opinion occurring years before the employment in question. The appellate court affirmed, and petitioner filed a petition for a rehearing, which was denied.

Without conceding the right of the Social Security Administration to use the prior U. S. Department of Defense psychiatric report, it was still *mandatory* that a psychiatrist of the Civil Service Commission examine the petitioner, with or without the use of the U. S. Department of Defense report.

Hence, the decision of the U. S. Court of Appeals was in error, since petitioner still had the right to be examined by a Civil Service Commission psychiatrist, before being forced to undergo involuntary retirement. The petitioner had not waived this right to undergo this second examination, nor was there any basis therefore in the record. Petitioner is in effect, still employed by the Social Security Administration until this second examination is completed and cause shown for the involuntary disability retirement of petitioner.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed, because it erroneously states, without any foundation in fact whatsoever, that petitioner did not avail himself of the opportunity to undergo the second psychiatric examination to which he was entitled, when the psychiatrists themselves would not examine petitioner.

Petitioner further submits that there are special and important reasons, within the meaning of Rule 19(b) of this Court, for permitting a writ of certiorari to be granted. In light of the July 19, 1979, medical report of Dr. John Kneipp, allowed to be filed in the petition for rehearing before the U. S. Court of Appeals for the Fourth Circuit (Appendix F to 5f), petitioner was correct in appealing and requesting this rehearing. In erroneously stating that petitioner failed to avail himself of the opportunity to undergo a second psychiatric examination, without any basis therefore in the record, the district court denied petitioner his full rights. The U. S. Court of Appeals compounded that error, and it gave no reason why a second examination could not have been completed, or why petitioner should be held to have waived his right to undergo such an examination, again depriving petitioner of fundamental rights and violating Civil Service Commission regulations.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

/s/ Albert A. Rapoport
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that I mailed, postage prepaid, a copy of the foregoing Petition for Writ of Certiorari to Burton D. Fretz, Esq., Attorney for Respondents, Appellate Staff, Civil Division, Department of Justice, Washington, D.C. 20530, this 18th day of July, 1980.

/s/ Albert A. Rapoport

APPENDIX

A. Judgment of U.S. Court of Appeals for the Fourth Circuit of February 20, 1980, denying rehearing.
B. Judgment of U.S. Court of Appeals for the Fourth Circuit of January 2, 1980.
C. Opinion of U.S. District Court for the District of Maryland, H-76-512, filed March 31, 1978.
D. U.S. Civil Service Commission Federal Personnel Manual, Chapter 752—Adverse Actions by Agencies, Subchapter 1-3.c & d.
E. U.S. Civil Service Commission Federal Personnel Manual Chapter 831-1 Disability Retirement, Subchapter S10-6a; S10-10).
F. Medical report of John A. Kneipp, M.D. of July 19, 1979.

Appendix A

JUDGMENT OF U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT OF FEBRUARY 20, 1980, DENYING REHEARING.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 78-1400

Ronald S. Dick,

Appellant,

versus

Joseph A. Califano, etc.,
et al.,

Appellees.

ORDER

Upon consideration of the petition for rehearing in the above entitled case and with the concurrence of Judges Field and Murnaghan,

IT IS ORDERED that the petition be, and the same is, hereby, denied.

FOR THE COURT:

Chief Judge, Fourth Circuit

February 20, 1980

Appendix B

JUDGMENT OF U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT OF JANUARY 2, 1980.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 78-1400

Ronald S. Dick,

Appellant,

versus

Joseph A. Califano, Jr., Sec.
of Health, Education & Welfare;
James B. Cardwell, Chairman,
Social Security Administration;
and Robert Hampton, Chairman,
Civil Service Commission,

Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore, Alexander Harvey, II, District Judge.

Argued December 6, 1979 Decided January 2, 1980

HAYNSWORTH, Chief Judge, FIELD, Senior Circuit Judge and MURNAGHAN, Circuit Judge.

Albert A. Rapoport for Appellant; Burton D. Fretz, Appellate Staff, Civil Division, Dept. of Justice (Barbara Allen Babcock, Assistant Attorney General; Russell T. Baker, Jr., U.S. Attorney; Robert E. Kopp, Appellate Staff, Civil Division, Dept. of Justice on brief) for Appellees.

PER CURIAM:

Plaintiff sought review of an administrative determination that he be retired involuntarily under the Retirement Act, 5 U.S.C. §8347(c). The District Court upheld the administrative action, and plaintiff appealed. Because the District Court properly resolved the issues presented on appeal, we affirm its judgment on the basis of its oral opinion. *Ronald S. Dick v. James [sic] Califano,* No. H-76-512 (D.MD., March 31, 1978).

AFFIRMED.

Appendix C

OPINION OF U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND, H-76-512, FILED MARCH 31, 1978.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONALD S. DICK	)	
	)	
vs.	)	H76-512 *CIVIL*
	)	
JAMES CALIFANO, Secretary	)	
Department of Health,	)	
Education & Welfare	)	

Baltimore, Maryland
March 31, 1978

Before the HONORABLE ALEXANDER HARVEY, II, U. S. District Judge, at 2:15 p.m.

APPEARANCES:

GEORGE J. COCOROS, ESQ.,
BARRY M. COHEN, ESQ.,
Attorneys for Plaintiff.

JOHN W. SHELDON,
Assistant U. S. Attorney,
Attorney for Defendant.

ORAL OPINION

THE COURT: Plaintiff, Ronald S. Dick, formerly an operations research analyst with the Social Security Administration, brings this civil action to seek judicial review of the determination made by the Civil Service Commission that he be involuntarily retired from his employment position due to a total disability caused by a mental disorder. Named as defendants in this case are the Secretary of the Department of Health, Education & Welfare; the Chairman of the Social Security Administration and the Chairman of the Civil Service Commission.

Jurisdiction is alleged under Section 10 of the Administrative Procedure Act, (the so-called A.P.A.) 5 United States Code, Section 701 *et seq.*, and under 28 United States Code, Section 1331.

Presently pending before this Court are a motion for summary judgment filed by the plaintiff and a motion for dismissal or in the alternative for summary judgment, (which will be treated herein as a motion for summary judgment) filed by the United States Attorney on behalf of the defendants. Briefs in support of and in opposition to both motions have been filed by the parties, and the administrative record which is over 1,000 pages in length, has also been filed. The Court has had an opportunity to study the briefs and administrative record and has heard oral argument in open court this afternoon.

The principal legal questions presented in this case concern the jurisdiction of this Court and the scope of review by this Court in a case challenging a determination of the Civil Service Commission. After an evidentiary hearing on December 5, 1975 before Administrative Law Judge Terrence A. Kerr (hereinafter referred to as the ALJ), the

conclusion was reached by the ALJ in a written opinion dated March 8, 1976 that plaintiff was totally disabled from his position as operations research analyst and that he should be involuntarily retired because of a psychiatric condition. Before examining the facts, this court must determine whether it has jurisdiction and if so what standard of review is to be applied.

In *Califano v. Sanders,* 430 U.S. 99 (1977), the Supreme Court held that the APA is not an implied grant of subject-matter jurisdiction. Accordingly, plaintiff's allegation of jurisdiction under the APA is without merit. *See Lowther v. Montgomery County,* 561 F.2d 1120, 1123 (4th Cir. 1977).

Plaintiff's amended complaint also alleges jurisdiction under 28 U. S. C. Section 1331. It is now well settled that in the absence of a statute precluding review, jurisdiction of a case of thissort would lie under Section 1331. *Califano v. Sanders, supra.* The government contends that 5 U.S.C. Section 8347 precludes all judicial review of the Civil Service Commission's disability determinations. Section 8347(c) provides:

> "The Commission shall determine questions of disability and dependency arising under this sub-chapter. The decision of the Commission concerning these matters are final and conclusive and not subject to review."

The government has cited no authority for its contention that Section 8347(c) precludes all judicial review. Indeed the authorities reviewed by the Court would indicate to the contrary. As the Court said in *Scroggins v. United States,* 397 F.2d 295, 297, (Ct. Cl.), *cert. denied,* 393 U.S. 952 (1968):

> "This is a special and unusual restriction on judicial examination, and under it courts are not as free to review Commission retirement decisions as they would be if the "finality" clause were not there. We have said that, at best, a court can set aside the Commission's determination "only where there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error 'going to the heart of the administrative determination.' "

And then there were citations omitted. *Accord, McFarland v. United States,* 517 F.2d 938 (Ct. Cl. 1975), *cert. denied,* 423 U.S. 1049 (1976); and a recent decision in this court, *Matricciana v. Hampton,* 416 F. Supp. 288 (D. Md. 1976) (Kaufman, J.). Nothing in *Califano v. Sanders, supra,* overrules this long established judicial construction of 5 U.S.C. Section 8347(c). Thus, the government's contention that all judicial review is precluded is without merit.

But, as noted, the standard of review in a case of this sort is extremely limited. *See Matricciana v. Hampton, supra.*

Plaintiff in this case essentially claims that the administrative findings here are not supported by substantial evidence. But the substantial evidence test is likewise not applicable here. Section 8347(c) precludes the conventional substantial evidence standard; the proper standard as noted is rather "whether there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error going to the heart of the administrative determination." *Scroggins v. United States, supra; Matricciana v. Hampton, supra.*

To determine whether this test has been met in this case, it is necessary to examine the pertinent facts.

On June7, 1974, plaintiff was notified by the Social Security Administration to submit to a psychiatric "fitness-for-duty" examination pursuant to 5 C.F.R. Section 831, 1203. The detailed charges specified that plaintiff was unable to separate his personal affairs from his assigned duties. The central concern of plaintiff had for some time been that psychiatric reports from former employers which had labelled him "paranoid" were impeding his advancement at the Social Security Administration. The charges noted that since 1969, plaintiff had engaged in a number of formal grievance complaints and informal demands to rectify alleged wrongs committed. However, the charges further specified that plaintiff was unable to distinguish the actions of his employer from the alleged wrongs committed by others for which he was seeking to hold his employer responsible.

For example, on December 10, 1970, plaintiff had initiated a grievance against his employer, the Social Security Administration, seeking to have an adverse psychiatric report expunged from his confidential personnel file, although he had previously been advised that Civil Service rgulations mandated retention of the report. Then in May, 1972, plaintiff had filed a grievance alleging that he should have been hired in 1969 at Grade 15 and would have been so hired except for the adverse psychiatric reports. On September 28, 1972, plaintiff had filed a grievance alleging religious discrimination because the Social Security Administration may have become aware that a psychiatrist in the Department of Defense had testified that plaintiff had a paranoid personality in a lawsuit brought by plaintiff to restore his security clearance. *See discussion in Dick v. United States,* 339 F.Supp. 1231, 1234-35 (D.D.C. 1972). In October 1973, plaintiff had threatened to file another

grievance against the Social Security Administration, unless George Washington University allowed plaintiff to teach a course which he had previously refused to teach. All of the grievance proceedings were unsuccessful because plaintiff was unable to establish any connection between prior adverse psychiatric reports and any alleged discrimination by the Social Security Administration.

The notice of charges has also cited examples of plaintiff's inability to separate his personal and business affairs. In June 1973, plaintiff had written unauthorized letters on government stationery to all fifty state governors as well as to others in order to promote "my [computer] system" which was actually the property of the Social Security Administration. On February 28, 1974, plaintiff sent a memorandum to his supervisor asking the Social Security Administration to send a letter to ITT, one of plaintiff's former employers, concerning his litigation with the Department of Defense in which he sought to have his revoked security clearance restored. Moreover, according to the notes of his supervisor Mr. Nathanson, plaintiff repeatedly interrupted work-related conversations to discuss the latest developments in his various grievances and legal proceedings against such government agencies as the Department of Defense, the Internal Revenue Service and the Maryland Tax Court.

Plaintiff also persistently abused agency stenographic, typing, stationery, and franking privileges in order to conduct his personal affairs, including the typing of his briefs in the numerous law suits and other proceedings he had brought.

After receipt of the notice of the charges made against him by the Social Security Administration, plaintiff accepted a psychiatric referral to James L. Wellhouse, M.D. The psychiatric report of Dr. Wellhouse was filed on November

28, 1974. Dr. Wellhouse concluded that while plaintiff had the requisite intellectual capability to perform his job, nevertheless plaintiff suffered from a paranoid personality. Dr. Wellhouse noted that whether plaintiff's observed behavior would interfere with his overall work performance and whether this degree of interference was within the tolerance of the agency was an administrative decision. Dr. Wellhouse concluded that "if Dr. Dick's behavior on the job is unacceptable to SSA, if reassignment to a job situation with supervision compatible with his behavior patterns is found not to be feasible, and if Dr. Dick declines to seek necessary treatment for his symptoms, then I would state that his mental disorder disables him in the performance of useful and efficient service in the position to which he is assigned."

This Court would note that plaintiff thereafter retaliated by suing Dr. Wellhouse in the United States District Court for the District of Columbia, *Dick v. Wellhouse,* Civil No. 75-0313 (D.D.C. dismissed July 25, 1975), and also by suing in this Court an agency official with the same result (the case was dismissed), *Dick v. DeGeorge,* Civil No. K-75-328 (D.Md. case dismissed Opinion dated December 18, 1975); *aff'd, per curiam,* Civil No. 76-1219 (4th Cir. Feb. 10, 1977). Both of these prior suits related to the institution of the same involuntary retirement proceedings involved here.

Based on Dr. Wellhouse's report, the Social Security Administration made a tentative determination that plaintiff was eligible for disability retirement and so notified him on December 27, 1974. After extensive correspondence with plaintiff, the Social Security Administration filed an application on March 6, 1975 with the Civil Service Commission seeking the involuntary retirement of plaintiff because of disability.

From March 14 to June 30, 1975, plaintiff was given the opportunity to undergo a second medical examination by the Civil Service Commission, but did not avail himself of this opportunity. On June 30, 1975, the Civil Service Commission approved the involuntary disability retirement application. Plaintiff then appealed to the Federal Employees Appeal Authority. After an extensive hearing on December 5, 1975 before Administrative Law Judge Terrence A. Kerr ("ALJ"), the ALJ in a written opinion dated March 8, 1976 concluded, as noted, that plaintiff was totally disabled for his former position by reason of his psychiatric condition. Plaintiff then filed this suit on April 6, 1976.

From a review of the record here, it is apparent to the Court that at most, the administrative record presents no more than a conflict of medical and other evidence. At the administrative hearing, psychiatrist Dr. Hector Ramirez testified on behalf of the plaintiff. Dr. Ramirez stated that plaintiff had a personality pattern disorder of a paranoid nature but that it was mild. (Tr. at 109). Dr. Ramirez noted that if plaintiff were to remain with the government, plaintiff would have to be placed in a situation where he was not followed by his psychiatric record. (Tr. at 115-116). Dr. Ramirez disagreed with Dr. Wellhouse and thought that Dr. Wellhouse's report made Dr. Dick's condition appear worse than Dr. Ramirez's disgnosis (Tr. at 94). However, Dr. Ramirez based his opinion solely on what plaintiff told him and he did not see the notice of disability retirement and other correspondence from the Social Security Administration which plaintiff had in his possession and which detailed the observed behavioral inadequacies (Tr. at 97-98).

Plaintiff contends that the testimony of Dr. Ramirez refutes the qualified medical conclusions of Dr. Wellhouse. However "a court cannot substitute its judgment on medical evidence for the determination of the Commission." *Gaines v. United States, supra* at 502. Moreover, "there is plainly no error going to the heart of the administrative determination when the Commission accepts one medical view rather than another." *Scroggins v. United States, supra* at 320. Thus, this contention of plaintiff is without merit.

The plaintiff also complains that Dr. Wellhouse never made a definite unequivocal statement that plaintiff was disabled. However, the weight to be accorded this medical report was a determination for the ALJ to make in the first instance. In any event, this Court would agree with the ALJ that an agency is not required to provide an idealized work environment structured to the emotional needs of the plaintiff's diagnosed medical disability. Accordingly, the hypothetical qualifications in Dr. Wellhouse's letter were not real alternatives to plaintiff's involuntary disability retirement.

Plaintiff also contends that the ALJ totally disregarded the favorable testimony of plaintiff's two co-workers. However, the ALJ expressly considered their testimony and rejected it in favor of documentary evidence which the ALJ found to be more credible and which established substantial interference with effective work operation. Thus, the ALJ found that plaintiff had not been performing useful and efficient service. This determination under conflicting evidence was properly one for the ALJ to make. Cf. Harris v. Mathews, 430 F.Supp., 1335, 1342 (D.Md. 1977). On the record here there is clearly no error going to the heart of the administrative determination as to any of the contentions advanced by plaintiff.

So for these reasons, plaintiff's motion for summary judgment will be denied, and defendant's motion for summary judgment will be granted, and I will prepare an appropriate order which would be the final order in the case.

I would suggest tthat as far as the other case is concerned, it may be that counsel could submit any additional briefs they would want to because of the ruling here today, anyway, that might affect it, and then we can take up the other case at a conference at a later date.

So if you would get those filed.

Thank you for your briefs and arguments, gentlemen.

(Thereupon, at 3:30 p.m., the aforecaptioned proceedings were concluded.)

REPORTER'S CERTIFICATE

I, George G. Davis, Jr., certify the foregoing 12 pages as the official transcript of the Oral Opinion in the March 31, 1978 proceedings of Dick v. Califano, No. H77-129, Civil.

/s/ George G. Davis, Jr.
OFFICIAL REPORTER

Appendix D

U.S. CIVIL SERVICE COMMISSION FEDERAL PERSONNEL MANUAL, CHAPTER 752—ADVERSE ACTIONS BY AGENCIES, SUBCHAPTER 1-3 c. & d.

[752–4]

* * * * *

1-3. GENERAL STANDARDS

* * * * *

c. **Security clearance and illegal political activities.** Reasons, or charges, relying upon security requirements (withdrawal or denial of a clearance, etc.) or political activity violations must not be used to support a proposed action under this chapter. Actioins supported by those reasons must be processed as outlined in chapter 732 or chapter 733.

d. **Effect of prior determinations.** If an agency hires an applicant with full knowledge of certain facts concerning his fitness, it may not properly propose adverse action against the employee on the basis of those same facts at a later date, because the agency in a case of this kind is not stating a reason for removal within the meaning of the regulations. Under the same reasoning, the Commission has found that agency adverse actions were not for ssuch cause as will promote the efficiency of the service when the employee has been previously disciplined for the same offense. That does not mean, of course, that if the employee commits a new offense the agency should not consider his past record in determining whether it should propose adverse action, or in assessing the appropriate penalty when the final decision is under consideration.

* * * * *

Appendix E

U.S. CIVIL SERVICE COMMISSION FEDERAL PERSONNEL MANUAL. CHAPTER 831-1 DISABILITY RETIREMENT, SUBCHAPTER S10-6a; S10-10

[31]

* * * * *

S10-6. INITIAL MEDICAL EXAMINATION REQUIREMENT

a. Unless there is other evidence acceptable to the Commission, no employee may retire for disability until he has been examined by a Federal medical officer or other physician designated by the Commission. Agencies are expected to assist in meeting this requirement as follows:

* * * * *

[34]

* * * * *

S10-10. FILED-BY-AGENCY DISABILITY RETIREMENT PROCEDURES

* * * * *

a. **Procedural responsibilities of agency when it considers acting upon deficiences in an employee's service caused by a possible health problem. * * ***

(2) *Making preliminary decision*

* * * * *

(b) It is recommended that supervisors and personnel officials consult informally with the agency medical officer to explore possible medical solutions to the employee's problems.

[35]

* * * * *

(5) *Obtaining medical evidence*

(a) If the counseling session has not made an alternative course of action possible, the agency may direct the employee to report for a fitness-for-duty examination as instructed by the following paragraphs. If evidence already available is apparently sufficient (Preferably in the judgment of a medical officer, particularly when a possible mental illness is indicated) to establish that the deficiencies in the employee's service are caused by disease or injury, such an examination would be unnecessary.

* * * * *

b. **Adjudication by Civil Service Commission upon receipt of agency-filed application for disability retirement.** (1) *Reviewing file* (a) * * *

(iii) The necessity of an examination to obtain further evidence. If the employee refuses to report for an examination and the evidence on file is not sufficient for a decision, the case may be returned to the agency for such action as the circumstance warrants.

* * * * *

Appendix F

MEDICAL REPORT OF JOHN A. KNEIPP, M.D. OF JULY 19, 1979

JOHN A. KNEIPP, M.D.
730 TWENTY-FOURTH STREET, N.W.
WASHINGTON, D.C. 20037

July 19, 1979

E. Eric Holt, Lt. Colonel, USAF
Chief, Adjudication Division
Defense Logistics Agency
Defense Industrial Security Clearance Office
P.O. Box 2499
Columbus, Ohio 43216

Re: Mr. Ronald Stewart Dick

Dear Colonel Holt:

Mr. Ronald Stewart Dick was seen in psychiatric consultation on July 6, 1979. He is a forty-five year old statistician who holds a Doctoral degree from Columbia University. He has been employed since October of 1978 by CHI Associates, Inc. as a statistical analyst for whom a Secret classification has been requested. He has had previous Secret clearances beginning with the Sperry Corporation in 1957 until he left ITT in 1968 for a position with the Social Security Administration as a GS-14 Operations Research Analyst. Retired from that position in September 1975 for

psychiatric disability, then later considered not disabled from gainful activity, he currently is engaged in a suit against the Social Security Administration to restore him to his previous level of employment or continue his disability compensation.

During my consultation with Mr. Dick, I did not find him to be lthe rigid, hostile and threatening person as he has been described by various psychiatrists ove the years of his examinations. My feeling was that he is an intelligent but simplistic man of basic social values who feels that he has been wronged by the SSA and is determined to seek a fair resolution. He says "If I had my job back, I would be so busy I wouldn't need security clearances for the engineering profession. I supervise the job of building computer systems to eliminate errors in disability payments I did the job myself." He states that the Labor Department Workmen's Compensation Appeals Board handed down a decision on April 17, 1979 of "probable employe harrassment," and that a new medical psychiatric evaluation of the entire matter is being ordered. Mr. Dick's position is that the SSA was fully aware of his previous psychiatric history when he was employed in 1968, that there was no "new illness and that he should be restored to his former position if he is no longer considered disabled.

The MMPI is in line with my clinical impression: "He is a person with strong needs to be seen by others, and perhaps by himself, as an unusually virtuous person. Such people tend to be naively defenseive and uncompromising individuals who stress moral issues and emphasize their own integrity. They tend to be frustrated, insecure individuals who have little insight, and are unaware of their own stimulus

value . . . He appears to be a responsible, somewhat conventional person who lacks assertiveness and may be overly submissive to authority. He may be described by others as conservative, unasumming and good-natured." Dr. David Trachtenberg's report of September 22, 1968 refers to a psychological report by Dr. Morton Cooper: "It is significant that Dr. Cooper failed to elicit any evidence of psychotic process or of paranoid personality structure. He notes stubborness as a prominent feature in Dr. Dick's personality which is well exemplified in his persistence in trying to obtain the clearance." Testing by Dr. Milton F. Shore in November 1974 was concerned with aggressiveness and underlying depression, remarking on "Dr. Dick's perception of himself as being small and empty," but without psychotic trends. In my opinion, the most illustrative psychological evaluation is that of Dr. Joseph N. Gaffney on June 7, 1978 which concludes with "I tend to view him as more eccentric in personal response style than as suffering from a serious personality disturbance."

As to his background, he was born in Queens, Nassau County, New York, an only child for eighteen years when a sister was born two years before he left home. His father came from Canada in the thirties, had a grammer school education, established a steam fitting shop and later became a New York life insurance salesman. His mother's family is said to have been here since the Mayflower. She had some high school education, and thereafter became a homemaker. His sister was employed with CHI Associates and helped him find his present job. She has returned home to take care of the father who had a stroke nine months ago. The applicant was a studious child, active in the Boys Scouts and other peer groups, always a busy participant but never a

leader. He attended Queens College, and graduated in 1955. As an undergraduate he was quite active in the Inter-Varsity Christian Fellowship and he and his wife maintain strong religious interests. His wife was a graduate student at Queens College when he was there as an instructor in the early sixties when his psychiatric difficulties began. She is now teaching at the Washington Christian School.

As has been described, in 1961 he was caught up in student demonstrations to which he reacted with his noted subbornness of character. However, Mr. Dick's letter to Mr. Phillip Nathanson of the SSA on march 1, 1974 in his accounting of Psychiatry Examination One does appear to be a bizare and persecutory grievance. At this time he saw a Dr. Rosenthal. From that point on, he has seen a number of psychiatrists who have given a number of opinions and diagnoses, all quite inconclusive.

The report of Dr. Lewis Linn dated February 3, 1968 is included in his file. Dr. Linn felt that he had "a personality pattern disturbance characterized by widespread feelings of persecution and compulsive, litiginous thoughts and actions. "He recommended withdrawal of his Security clearance which resulted in the loss of his position with ITT and the move to the SSA. My present feeling is that Dr. Linn overreacted to the surface manifestations of this essentially insecure but intellectually and compulsively overly-compensating individual. Loss of clearance set up a further series of allegations, psychiatric consultations and struggles to escape from a Kafka-ish entanglement.

I think that it is important to differentiate what has gone wrong with Mr. Dick since 1961 from whether he has a mental condition which recommends against his Security clearance. He has no grievance against his Government, although he is determined to pursue his contest with SSA to its final conclusion. Otherwise, he is intellectually of superior intelligence and shows no defects of a psychotic or anti-social nature.

To conclude, in my opinion, Mr. Dick does not suffer from a mental condition or psychiatric illness which now or in the future may cause a significant defect in his judgment or reliability in safeguarding classified information.

Sincerely yours,

/s/ John A. Kneipp
John A. Kneipp, M.D.

JAK:ark